

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 656 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE N.J.PANDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

ASHOKKUMAR SURSINBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR KJ SHETHNA for Petitioner

MR SA PANDYA, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE N.J.PANDYA

Date of decision: 04/08/97

ORAL JUDGEMENT

The appeal is filed not by an accused, but a witness of Special Case No.2 of 1993 of the 1d. Additional Sessions Judge, Kheda, at Nadiad, who exercising powers of a Special Judge, in the Prevention of Corruption Act, 1988, was dealing with a case against the two accused, accused no.1 came to be acquitted and

accused no.2 having died during the pendency of the case, the matter ended there. The said order is dated 6th June 1997, but the 1d.Judge felt that, the present appellant-Ashokbhai Parmar is required to be proceeded with under Section 344 of the Code of Criminal Procedure and hence, a notice came to be issued to him. At the end of the said notice, the Presiding 1d. trial Judge, by order dated 30th June found the witness-appellant to have fabricated the evidence before the trial Court and, therefore, under Section 344 of the Code of Criminal Procedure, he sentenced him to suffer imprisonment for three months with a fine of Rs.500/- and in default, to suffer imprisonment for 15 days.

It is against the said order dated 30th July 1997 that the present appeal is filed.

Looking to the fact that the appellant is a Government servant and that his entire career is in jeopardy, with the consent of the other side, the matter was admitted and decided to be heard finally.

In response to the notice as per Annexure.F, page 78, the appellant had drawn the attention of the trial Judge that the old Public Prosecutor of the case had not chosen to consider this witness to have deserted the prosecution nor has he further chosen to put any question in the nature of cross-examination and if his examination in-chief is read carefully, it cannot even remotely be suggested that he has not supported the prosecution.

The copy of the deposition of the appellant is at Annexure.B, page 7. He was examined as witness no.4 by the prosecution before the trial Court, at Exh.23.

The 1d. APP Shri Pandya, has drawn my attention to page 12 of the deposition of this witness, where in cross examination, he has admitted that he did not know as to in connection with what "Note" (Currency Note) was to be given to the accused.

Then, he drew my attention to the copy of the panchnama, pages 15 to 25 and more particularly at page no.17 where the witness panch no.1 was specifically instructed by the raiding officer that he shall accompany the complainant and further one currency note was to be handed over to the accused no.1 and thereafter along with him to go and meet the accused no.2 where the remaining currency notes were to be handed over. No doubt, the instruction was also to the effect that the currency notes were to be handed over only when a demand is made

pursuant to the earlier demand of bribe.

No doubt, in the background of the said statement to be found in the said panchnama which was exhibited at Exh.24, in course of the deposition of the very witness, who is before the trial Court, i.e. the appellant, one could have considered it to be a deviation from the contents of the panchnama and to an extent, probably, even material deviation. However, before use of this alleged deviation is made for any purpose whatsoever, the least that could have been done was to draw the attention of the maker of the earlier statement or the person who has deviated from earlier version and thus, give him an opportunity of explaining the same.

Throughout the deposition of the appellant, witness at Exh.23, the certified copy of which is at pages 7 to 14, it can be found that no such demand is made.

On the contrary, if one reads the judgment of the trial Court, so far as the charge of corruption against the acquitted accused and the deceased accused is concerned, it is the complainant who has not supported the prosecution.

In this background, to pick up a witness and then make use of the contents of the panchnama at page 17 merely because it has been exhibited, the deviation so dealt with, in my opinion, would not be a correct approach.

It is, indeed, an irony that the very panchnama which has been exhibited through the testimony of the witnesses which is sought to be prosecuted for the contents of that very panchnama though while the witness was in box, he was never asked a word by the Public Prosecutor in charge of the prosecution about the alleged deviation. This would mean that, so far as the prosecution is concerned, they were not at all disturbed or inhibited by whatever support they got from this witness who was, no doubt, one of the star witnesses of the prosecution.

Technically also, as rightly submitted by Mr. Shethna, before the proceeding under Section 344 of the Code of Criminal Procedure, there should have been a finding recorded that it is expedient in the interest of justice to do so, which has not been done. In view of the above, the appeal requires to be allowed and the same is hereby allowed. The order of the trial Court is set

aside. Fine if paid, is ordered to be refunded. The bail bond shall stand cancelled.

sreeram.